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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,347	08/24/2001	Ali Yahiaoui	15,876	1332

7590

10/03/2002

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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

*File Copy*

Application No.

09/938,347

Applicant(s)

YAHIAOUI ET AL.

Examiner

JYOTHSNA A VENKAT

Art Unit

1615

The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

Receipt is acknowledged of IDS and Supplemental IDS filed on 8/24/01 and 7/9/02.

Claims 1-36 are pending in the application and the status of the application is as follows:

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-10, 13-18 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following reasons apply:

✓ 1) The expression "the topical application is a particulate" is unclear as to applicant's intent. The invention is for the treatment of common skin disorders that are associated with personal care products by applying a lotion or an ointment to the personal care products. The expression "particulate" includes various silica and clays and these components irritate the skin when applied alone on the substrate. The claim written implies that the substrate has only the particulate. If it is applicant's intent to claim the particulate on the substrate, explanation is requested with respect to the personal care products.

✓ 2) Claims 10, and 12-14 are unclear as to applicant's intent. The claims recite at the end "blend or combination of". Note that in lotions and ointment technology, combining the ingredients forms lotion or ointment, which implies that the lotion or an ointment is a blend of ingredients. Therefore what is the difference between a *combination* and a *blend*? Detailed explanation is requested.

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- 3) Regarding claim 15, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).
- 4) Claim 16 lacks antecedent basis as claim 15 recites "nonwoven fabric". Additionally claim recites, "comprises" followed by nonwoven web. The expression "comprises" includes nonwoven web and also any of the materials recited in claim 15. Is it applicant's intent?
- 5) Claim 17 is in the improper Markush group because of the expression "comprises". *Deletion of "comprises"* is suggested to overcome the above rejection.
- 6) Regarding claim 24, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1-13 and 15-35 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,287,581 B1 ('581).

The instant application is claiming-*A composite material comprising:*

*A substrate having first and second surface*

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*A boundary layer on the first surface of the substrate*

*A topical application on the surface of the boundary layer opposite of the substrate, where in the boundary layer has compositions comprising ingredients (claims 10-13) and also method of forming composite material for transferring the topical application from substrate to surface.*

The examiner interprets the meaning of blend is same as combination.

See figures, See cols. 4-10 for the various ingredients. In each choice of ingredients the patent discloses "mixtures" which implies "blend or combination". See col.4, lines 5-15 for soy sterol, see col.5, lines 10-50 for various compositions which includes claimed petrolatum, soy sterol, ozokerite wax, ethylene/vinylacetate copolymer, see also col.8, line 58 for sunflower oil. See col.10, lines 43 et seq see col.14, lines 40 et seq for the various materials, see cols 15-16 for the description of the figure, see col.17, lines 35-40, which reads on claim 32, see col.14, lines 64 et seq, which reads on claim 5, see col.14, lines 1-15 which reads on claim 33, see also the examples and tables. Since the components are same, claims 2-3, 8, 25-27 and 29-30 are inherent absence of evidence to the contrary.

5. Claims 1-11 and 15-35 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,153,209 ('209).

The instant application is claiming-*A composite material comprising:*

*A substrate having first and second surface*

*A boundary layer on the first surface of the substrate*

*A topical application on the surface of the boundary layer opposite of the substrate, where in the boundary layer has compositions comprising ingredients (claims 10-11) and also method of forming composite material for transferring the topical application from substrate to surface.*

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The examiner interprets the meaning of blend is same as combination.

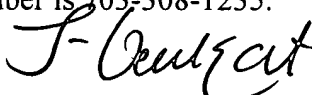
See figures, See col. 15, lines 56 et seq for the claimed petrolatum based, see col.s 15-26 for the various ingredients claimed in claim 10, see col.6, lines 40 et seq for the various materials, see cols .8-12 for the description of the figures, see col.30, col.31, lines 20-30, which reads on claim 32, see col.10, lines 45-55, which reads on claim 5, see col.10, lines 20-30, which reads on claim 31, see also the examples. Since the components are same, claims 2-3, 8, 25-27 and 29-30 are inherent absence of evidence to the contrary.

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT whose telephone number is 703-308-2439. The examiner can normally be reached on M-F, 9:30-6:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
JYOTHSNA A VENKAT  
Primary Examiner  
Art Unit 1615